

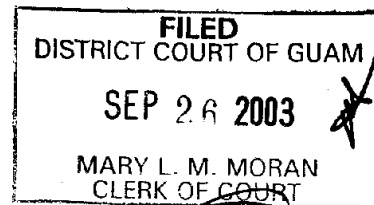
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13 UNITED STATES DISTRICT COURT
14 TERRITORY OF GUAM
15

16 UNITED STATES OF AMERICA,)
17)
Plaintiff,)
18 v.)
19 GUAM WATERWORKS AUTHORITY)
and the GOVERNMENT OF GUAM,)
20)
21 Defendants.)
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28)



1 **I. The Complaint and the Stipulated Order**

2 The United States filed a complaint in this action on December 20, 2002, seeking
3 injunctive relief and the assessment of civil penalties against the Guam Waterworks Authority
4 ("GWA") under the Clean Water Act, 33 U.S.C. §§ 1251 - 1387 (the "CWA"), and the Safe
5 Drinking Water Act, 42 U.S.C. §§ 300f - 300j-26 (the "SDWA"). The complaint included
6 allegations against GWA pursuant to the emergency provisions of both the CWA and SDWA --
7 section 504 of the CWA, 33 U.S.C. § 1364, and section 1431(a) of the SDWA, 42 U.S.C.
8 § 300i(a) -- to address the imminent and substantial endangerment to the health and welfare of
9 persons presented by: (1) the numerous and repeated discharges of untreated and inadequately
10 treated wastewater from GWA's treatment works, resulting in elevated levels of fecal coliform
11 bacteria in both surface waters and drinking water wells on Guam; and (2) serious deficiencies in
12 GWA's public water systems, causing contaminated water to be served to the public. The United
13 States also sought both civil penalties and injunctive relief under CWA section 309(b) and (d),
14 33 U.S.C. § 1319(b) and (d), for violations of the CWA and the terms and conditions of
15 applicable National Pollutant Discharge Elimination System ("NPDES") permits, and under
16 SDWA section 1414(b), 42 U.S.C. § 300g-3(b), for violations of the SDWA and the National
17 Primary Drinking Water Regulations. The United States joined the Government of Guam as a
18 statutory defendant in this action pursuant to CWA section 309(e), 33 U.S.C. § 1319(e).

19 After months of negotiations, the parties were able to reach an agreement on the terms of a
20 Stipulated Order for Preliminary Relief, which the United States filed with the Court on May 21,
21 2003. The 41-page Stipulated Order contains a comprehensive set of interim measures to address
22 GWA's violations of the CWA and SDWA. Among other things, the Stipulated Order includes a
23 set of schedules requiring GWA to implement a broad range of measures addressing GWA's
24 management and organizational structures, operations and maintenance, financial administration,
25 as well as short-term construction and rehabilitation projects. The Stipulated Order was entered
26 by the Court on June 5, 2003.

1 **II. Bill No. 97 (COR)**

2 The United States is informed that Bill No. 97 (COR), "An Act to Extend the Moratorium
3 on the Guam Waterworks Authority Rate Surcharge of 11.5%," will be considered by the Guam
4 Legislature on September 29, 2003. Bill No. 97 would prohibit GWA from raising its rates or
5 imposing a surcharge "if such increase or surcharge is intended, in whole or in part, to pay for past
6 due obligations by GWA to any vendor, including power consumption or the purchase of water
7 from water providers." We have attached a copy of this Bill for the Court's information as
8 Attachment A.

9 The United States, GWA, and the Government of Guam spent several months crafting the
10 Stipulated Order to address the considerable structural, managerial, operational, and financial
11 problems faced by GWA. Regarding GWA's financial management, the Stipulated Order
12 obligates the Government of Guam and GWA to submit, by October 3, 2003, an Interim Financial
13 Plan that details how GWA will generate revenue. The Plan, which must include any necessary
14 rate adjustment, shall ensure revenues are "sufficient to cover the cost of compliance activities
15 and deliverables required by this Stipulated Order for Preliminary Relief, as well as any other
16 anticipated expenses . . . *including all existing debt and expected debt service . . .*" Stipulated
17 Order at ¶ 28 (emphasis added).

18 The Stipulated Order contains a complex set of schedules to implement programs to start
19 GWA on the path of rehabilitating its system. In order to finance the rehabilitation of its system,
20 GWA needs to be able to issue bonds to pay for critical construction projects. If Bill No. 97
21 becomes law, however, GWA's ability to pay for its existing debt could be jeopardized. If GWA
22 defaults on its obligations to pay its vendors, it is unlikely that GWA would be able to secure the
23 bond financing necessary to meet its obligations under the Stipulated Order. Without bond
24 financing, GWA would need to raise rates dramatically to directly fund the capital improvements
25 needed to address the drinking water and wastewater emergency currently facing the people of
26 Guam.

1 The United States' concern about passage of Bill No. 97 is based on recent experience
2 with GWA and the Guam Legislature. The U.S. Environmental Protection Agency ("EPA")
3 entered into an Administrative Order on Consent ("AOC") in August 2001 with GWA and the
4 Government of Guam that covered all of GWA's sewage treatment plants. The AOC contained a
5 Finding of Violation that documented GWA's history of NPDES violations and unauthorized
6 discharges and spills. It also required GWA to submit a financial plan and a compliance schedule
7 for its sewage treatment plants and wastewater collection and conveyance systems to bring them
8 into compliance with the NPDES permits and the CWA.

9 In February 2002, GWA submitted to EPA a financial plan and compliance schedule,
10 explaining how GWA would secure funds for the projects and stating when the projects would
11 occur. One month later, Guam's Governor signed Bill 282, authorizing a short-term debt of \$21
12 million for GWA to implement the projects. The short-term debt was predicated on GWA's
13 ability to raise users' rates to support the issuance of a bond. In May 2002, however, the Guam
14 Legislature, overriding the Governor's veto, passed a law prohibiting GWA from raising user
15 rates for one year. As a result of this legislative moratorium on rate increases, GWA did not have
16 the financial resources to comply with the AOC, and GWA's violations of the CWA continued
17 unabated until this lawsuit was filed.

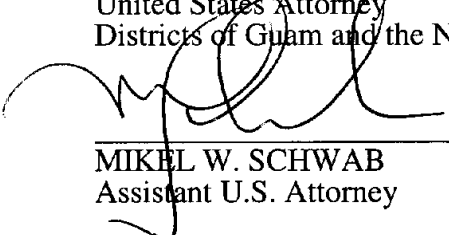
18 As the Ninth Circuit concluded, a valid state law cannot stand in the way of a federal
19 court's remedial scheme if an action is essential to enforce the scheme. Hook v. Ariz. Dept. of
20 Corrections, 107 F.3d 1397, 1402 (9th Cir. 1997). A legislative moratorium on GWA's rate
21 increases or surcharges would seriously undermine GWA's ability to comply with its obligations
22 under the Stipulated Order. In order to assess this issue, we respectfully request the Court to:
23 (1) set a status conference in this case, and (2) direct Defendants GWA and the Government of
24 Guam to submit a report to the Court explaining the impact of Bill No. 97 and its effect on
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1 Defendants' ability to comply with the Stipulated Order for Preliminary Relief in this case.

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3 Respectfully submitted,

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5 LEONARDO M. RAPADAS
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Districts of Guam and the NMI

7 Dated: 9 26 03


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**TWENTY-SEVENTH GUAM LEGISLATURE
2003 (FIRST) Regular Session****Bill No. 97 (COR)**

Introduced by:

Mark Forbes

**AN ACT TO EXTEND THE MORATORIUM ON THE GUAM WATERWORKS AUTHORITY
RATE SURCHARGE OF 11.5%.****BE IT ENACTED BY THE PEOPLE OF GUAM:**

Section 1. Intent. On May 10, 2002, Public Law 26-81 was enacted, placing a one-year moratorium on the implementation of an 11.5% surcharge on water bills by the Guam Waterworks Authority. This moratorium was enacted for two reasons. The first was that economic conditions made the payment of the surcharge a hardship for many of our people. The second was that the surcharge was intended to pay for overdue power bills on the part of GWA, and not for any improvements to the water or wastewater systems of Guam. The Legislature found that the application of a surcharge upon the ratepayers of Guam, solely for the purpose of paying GWA due obligations to the GPA, was in effect making the ratepayers pay for GWA's poor management decisions.

Recently, GWA announced that it would proceed with the implementation of the 11.5% surcharge, and further, would apply the surcharge yet again towards unpaid bills on the part of GWA. The Legislature finds that conditions are unchanged from a year ago, when P.L. 26-81 became law, and the moratorium against this type of surcharge must be extended.

Section 2. Section 2 of Public Law 26-81 is amended to read:

"Section 2. Abolishment of GWA's Surcharge. GWA's eleven and one half percent (11.5%) surcharge, approved by the Public Utilities Commission ("PUC") in the PUC's decision and order dated September 13, 2001 in Docket Number 00-01, is hereby abolished for ~~the a period of the moratorium mandated by section 3 of this Act of three (3) years.~~"

Section 3. Section 3 of Public Law 26-81 is amended to read:

"Section 3. Moratorium on All Rate Increases or New Surcharges by GWA. There shall be a ~~one (1) year~~ **two (2) year** moratorium on any rate increase, or new or increased surcharge billed by GWA for services it provides to its customers, if such increase or surcharge is intended, in whole or in part, to pay for past due obligations by GWA to any vendor, including power consumption or the purchase of water from water providers." GWA shall not bill its customers for any increase in rates or new or increased surcharge for ~~one (1) year~~ **two (2) years, if such increase or surcharge is intended, in whole or in part, to pay for past due obligations by GWA to any vendor, including power consumption or the purchase of water from water providers.**"

Attachment A

1 CERTIFICATION

2 I, Marie Chenery, Paralegal working in the United States Attorney's Office, hereby certify
3 that copies of the United States' Request for Status Conference were served by facsimile and
4 personal service to the attorneys of record at the following addresses:

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17 Dated: September 26, 2003

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19 MARIE CHENERY
20 Paralegal
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